

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-7303

No. 75-7303

In The
United States Court of Appeals
For the Second Circuit

MICHAEL FERGUSON, a minor, by THERESA FERGUSON,
his parent. and on behalf of others
similarly situated

- Plaintiff - Appellant

ARMAND POY, Individually and as Mayor of the
Town of Enfield, Connecticut

- Defendant - Appellee

BRIEF OF APPELLEE

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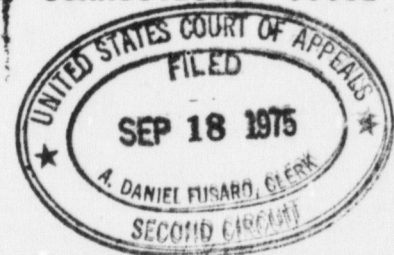


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OPINION OF DISTRICT COURT

As included in the Appendix 1, 2

ISSUES PRESENTED

Whether or not the District Court erred in dismissing the Appellants claim that the Enfield Town Charter denies his right to speak at the annual Town budget hearing.

FACTS

The facts are accurately stated by the Appellant in his Brief and the Court in its opinion, with the addition of two (2) further points.

1. The Appellant in his Brief on page 3 states:

"Each April, the Town Council of Enfield holds at least 'one public hearing - at which any elector or taxpayer may have an opportunity to be heard regarding appropriations for the ensuing fiscal year.'"

It should also be noted that the tax rate is set by the Town Council at a meeting subsequent to this public hearing and that those who appear and speak at the public hearing do not actually vote on the adoption of the budget and tax rate (TR 29, 30) (Court opinion, page 3).

2. The Appellant in his Brief on page 4 states:

"No voter or taxpayer was refused the opportunity to speak; in fact numerous persons did speak at the meeting. Chapter VI, Section 4 of the Town Charter has been selectively enforced by Town officials against persons, including the Plaintiff, who are neither electors nor taxpayers."

The section of the Charter has been enforced against all those potential speakers under the age of 18 and

all of those who live out of the Town of Enfield who do not own property within it. The implication is made that some minors and/or out-of-towners not eligible under the Charter provision have knowingly been allowed to speak and that is not a fact. (TR 27).

ARGUMENT

The Appellee will chiefly rely upon the Ruling of the Court on the Application for Order to Show Cause, dated April 28, 1975 and which is included in the Appendix.

However, there are a few areas which the Appellee would like to briefly amplify.

I. THE RIGHT OF FREE SPEECH IS NOT AN ABSOLUTE RIGHT.

The Appellant's overall complaint is that there is an infringement of the broad free speech rights.

But the right to free speech is not an absolute right Speiser v. Randall 347 US 513 and others as cited at 16 Corpus Juris Secundum 1103. It has never been intended that the guarantee of free speech is an absolute license to speak. It is a right which is subordinate to the greater rights of the general public interest and to the right of the government to maintain and protect itself. 16 Corpus Juris Secundum 1106.

For instance the public has no common law right to attend or speak at meetings of governmental bodies McQuillen-Municipal Corporations #13.07a, unless statutes or ordinances require otherwise.

One area where it has been mandated that the people must be heard - that is given the right to speak - is in the assessment of a special tax. The rule in that instance is, "Before special assessments can be charged upon the property of private persons, the owners must be given notice thereof, with an opportunity to be heard." McQuillen #38.98, #38.106. There is no authority however, which requires the governmental body setting the tax to give the right to be heard to anyone other than those who are to be assessed.

Since the public hearing is directed specifically to the annual budget which is to be paid for by local taxation, the governmental body has a right to restrict the people who they hear to those who are either going to pay the tax or who have a right to participate in the election of those who set the tax. Such a restriction on this public hearing for a specific purpose is not directed against not hearing just minors, who don't own property and aren't eligible to vote, but also against all those persons living out of Town unless they own property.

II. MUNICIPALITIES MAY FORMULATE RULES AND PROCEDURES OF THEIR MEETINGS.

Local municipalities are entitled to adopt and/or change their rules of procedure upon which they may conduct their meetings, McQuillen #13.42. They may also formulate their own rules with regards to a public hearing. These rules must consider requirements which are mandated by constitutional and statutory law such as right-to-know laws and the principal of giving the right to those actually assessed an opportunity to be heard.

The Town of Enfield, in adopting Chapter VI, Section 4, merely reflects the long standing State policy for the Connecticut legislature in Section 7-6 of the Connecticut General Statutes which has established the same restriction for all towns in the State which don't have charters.

The Town of Enfield does have a charter adopted under the provisions of the Connecticut Home Rule Statutes, Section 7-193 and 7-194. There is no requirement under these Statutes that a town adopting a charter even hold public hearings prior to the adoption of their budget. Since this is not a requirement, charter towns, including Enfield, don't have to hold hearings at all. But Enfield has indicated by charter it wants a hearing held so Council can hear from two groups - taxpayers and electors. Under those circumstances they should have a right to hear whom they want to hear.

III. BUDGET HEARING--PURPOSE IS FOR TAX SETTING BODY OF MUNICIPALITY TO HEAR COMMENTS OF THOSE WHO MUST PAY THE TAX, OR WHO ELECT THE BODY.

The purpose of a budget hearing under the Enfield charter, is to give the Enfield Town Council, which must adopt a budget and set a tax rate, the opportunity to hear electors and taxpayers give their views on the proposed budget.

It is not a general gripe session for anyone to speak about anything. The Council is interested in listening to those people who must pay for the proposed budget and/or those who have elected the Council or will elect the Council.

The Appellee will not argue that there could be others who might be interested in the budget. Out-of-town contractors who do business within the municipality, other out-of-town residents who visit or shop within the Town borders, out-of-town drivers who drive on the municipality's streets and are therefore affected by the quality of the Town's roads and police protection are just a few other groups of people besides minors attending the local schools who may be interested in the budgetary process. But the parties to be actually assessed and who take part in the election process are the ones whom the Council wants to hear opinions from, and the budget hearing is set up to hear from those.

As indicated, the past budget hearings have lasted until 11:30 p.m. or 3:00 a.m.. During that time, the Council is most interested in hearing from the maximum number of those most directly affected by the tax; and, for that reason time limit rules were set up--first privilege 5 minutes limit; second privilege 10 minutes limit; and third privilege unlimited time.

IV. NO DENIAL OF ANY CLASS OF PERSONS MAKING
KNOWN THEIR VIEWS OF BUDGET TO COUNCIL
MEMBERS.

In no way is there a denial of free speech to anyone not in the class of persons eligible to speak at the annual budget hearing. There is absolutely no prohibition against the Appellant (who next year will be 18 years old and therefore eligible to speak) or any other minor or non-resident from having his views made known to the members of the Town Council concerning any aspect of the budget.

- a. They are all free under the present rules and procedures of the Town Council to come to a regular monthly meeting of the Council and speak under the section of the agenda set aside for public communications. In fact, the Appellant Ferguson in the past has done exactly that.


- b. There is no prohibition from the Appellant presenting his views to members of the press (there are six (6) newspapers serving Enfield) and thus getting even wider dissemination of his views to the people.
- c. There is no prohibition from the Appellant getting in touch with each and every member of the eleven (11) member Council to personally express his views.
- d. There is no prohibition from the Appellant attending and speaking at any meeting or gathering of people he either organizes or is requested to appear before to give his views on the budget.

CONCLUSION

The District Court did not err in dismissing the Application for the Order to Show Cause. The Enfield Town Charter, Chapter VI, Section 4 is not unconstitutional as it does not deny anyone the right of free speech.

Respectfully submitted,

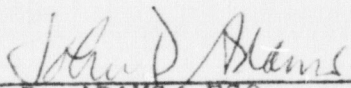
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CERTIFICATE OF SERVICE

The undersigned, Counsel for the Defendant-Appellee, hereby certifies that copies of Appellee's brief were mailed, by first class mail, postage prepaid, to: Eliot Nerenberg, Esq., 772 Farmington Avenue, West Hartford, Connecticut 06119; Frank Cochran, Connecticut Civil Liberties Union Foundation, 57 Pratt Street, Hartford, Connecticut 06103; and Alan Rom, Esq. 18 Sherman Street, B-4, Hartford, Connecticut on September 16, 1975.



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